IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

WP(C).No. 20753 of 2006(U)

OS.267/1996 of PRINCIPAL SUB COURT,PARAVUR

.....

PETITIONER:

RUGMINI AMMA, DAUGHTER OF KARTHYAYANI
AMMA, AGED 61, RESIDING AT CHITRA,
NADAMA DESOM, NADAMA VILLAGE, TRIPUNITHURA,
ERNAKULAM DISTRICT.

BY ADV. SRI.T.B.THANKAPPAN
SMT.P.V.RADHAMANI

RESPONDENT:

ARUN LOBO, S/O.C.F.X LOBO,
VIII, 2077, NEW ROAD, FORT COCHIN.

BY ADV. SRI.K.RAMACHANDRAN
SMT.R.MEERA
SRI.K.MOHAMMED FAISAL NAHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

W.P © NO.20753 OF 2006

PETITIONER'S EXHIBITS:

EXHIBIT.P1: TRUE COPY OF I.A. 413/2004 DATED 7.1.2004

EXHIBIT.P2: TRUE COPY OF THE COMMON ORDER DATED 22.12.2005 IN I.A. 413/04 & I.A. 2630/2005

EXHIBIT.P3: TRUE COPY OF PETITION 151 OF THE CPC INITIATED SALE PROCEEDINGS

M.N.KRISHNAN, J.

WP(C)No.20753 OF 2006 U

Dated this the 7th June, 2007.

JUDGMENT

This writ petition is filed seeking to quash the order of the learned Sub Judge, North Parur in refusing to order refund of half the court fee. According to the learned Subordinate Judge, the case is not disposed of solely on admission of the parties without an investigation and therefore the plaintiff is not entitled to refund of one-half of the court fee. Section 69 of the Kerala Court Fees and Suits Valuation Act, 1959 reads as follows:-

> **"Refund in cases of compromise or when suit is decided on the admission of parties**-- When a suit or appeal is compromised or when a suit is decided solely on the admission of the parties without any investigation, one-half of the court fee paid on the plaint or memorandum of appeal shall be ordered by the Court to be refunded to the parties by whom the same have been paid respectively."

Mandatory condition is that the suit must have been compromised or decided solely on the admission without any investigation. On 4.7.2001 the defendant has made the following admission on the written statement:-

> "The defendant is withdrawing the contentions. The defendant has no objection in granting a decree for specific performance to the plaintiff. One-half of the court fee may be refunded to the plaintiff."

So, a reading of the above said lines make it crystal clear

that the defendant is not contesting the case. Since the defendant had withdrawn all the contentions raised in the written statement then necessarily the suit has to be decreed on that admission of the averments in the plaint and, therefore it amounts to a decree on admission of the parties and therefore I find that there is no bar in applying Section 69 of the Court Fees Act to refund one-half of the court fee to the plaintiff. So far as the other matters are concerned, the parties may move appropriate application before the appropriate court for further directions. Writ petition is disposed of accordingly.

M.N.KRISHNAN
Judge

jj